

**ORDINANCE NO. 9  
SERIES 1997**

error in typing on  
original ordinance  
(Article 3 written as 1)

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUNNISON REQUIRING A LICENSE FOR TRANSIENT MERCHANTS OPERATING WITHIN THE CITY OF GUNNISON, ESTABLISHING REQUIREMENTS FOR THE ISSUANCE OF SAID LICENSE, AND ESTABLISHING THE PENALTY FOR THE VIOLATION THEREOF.**

**WHEREAS**, transient merchants operating within the City of Gunnison often operate without knowledge of the existing regulations of the City of Gunnison regarding land use, permissible signs, and advertising devices, and the locations of public rights-of-way. As a result, such transient merchants unknowingly violate these regulations and create unsafe situations on both public and private property; and

**WHEREAS**, some transient merchants engage in activities within the City upon which sales tax is due to the State, County, and City which goes uncollected as a result of the temporary nature of the transient merchant's presence within the City of Gunnison, which results in lost revenue needed to pay for essential government services, and places a disproportionate burden upon permanent merchants doing business within the City; and

**WHEREAS**, the City Council of the City of Gunnison deems it necessary to adopt a licensing requirement for transient merchants to assure compliance with existing City ordinances, and to collect sales tax revenues properly due upon the transactions conducted by transient merchants within the City of Gunnison;

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF GUNNISON, COLORADO, ORDAINS:**

Section 1. The City Code of the City of Gunnison shall be amended by the addition of a new chapter and article, to be known as "Chapter 8, Business Regulations, Article 1, Transient Merchants", as follows:

- 8-1-1: Definitions
- 8-1-2: License Required; Application
- 8-1-3: Issuance of License
- 8-1-4: Transferability of Licenses
- 8-1-5: Obstruction of Traffic Prohibited
- 8-1-6: Local Sponsor
- 8-1-7: Revocation of License
- 8-1-8: Appeals
- 8-1-9: Penalties

**8-1-1: DEFINITIONS:** For the purpose of this Article, the following definitions shall apply unless in conflict with the context or plain meaning.

**LOCAL SPONSOR:** A merchant who has paid City sales taxes without delinquency for the previous year with a permanent place of business within the City, a local government, or a Gunnison County non-profit organization, civic organization or church.

**PERMANENT PLACE OF BUSINESS:** The permanent place of business where business is continuously conducted from day to day and regularly kept open for the purpose of said business. Every business not conducted at a permanent place of business as defined herein, for the purpose of this Article, is termed a "Transient Merchant" whether the person conducting such transient business is or is not a resident of the City of Gunnison.

**TRANSIENT MERCHANT:** Any person who travels within the City or has a temporary location for the conduct of his or her business, who engages in the business of selling tangible personal property, who does not have a permanent place of business and who, in furtherance of said purpose, hires, leases, uses, or occupies any building, structure, motor vehicle, trailer, tent, hotel, motel, or lodging house room, apartment, shop, street, alley, or other place within the City, for the exhibition or sale of such goods, wares, services, and merchandise. A resident of the City conducting a yard sale or casual sales shall not be considered to be a transient merchant until he/she has conducted such sale for a total of four (4) calendar days within one calendar year. After conduct of such sales for four (4) days in any one calendar year, the person conducting said sale shall be considered to be a transient merchant.

A Gunnison County non-profit organization, civic organization, or church which engages only in occasional sales or fund-raising drives shall not be considered a transient merchant. A person participating in an event sponsored by a local government, a Gunnison County non-profit organization, civic organization, or church which involves multiple vendors shall not be considered a transient merchant. A person engaged in the business of selling and delivering tangible personal property directly to residents of the City who usually employs a vehicle for such deliveries over a regularly-established route and ordinarily sells from orders previously placed from such residents or regularly delivered on a schedule shall not be considered a transient merchant.

**8-1-2: LICENSE REQUIRED; APPLICATION:** It shall be unlawful for any transient merchant to engage in any such business within the City without first obtaining a license from the City and a local sponsor in accordance with this Article and as provided in Section 8-1-6 of this Article.

- (A) A license application shall be filed with the City on forms furnished by the City, and shall provide the following information:
  - 1 The name and address of the applicant and each employee or agent thereof, who will engage in business within the City.
  - 2 A description of the nature of this business and goods or services offered, and the locations within the City of Gunnison upon which business will be conducted.
  - 3 Written evidence of authorization to use location.
  - 4 Name and address of local sponsor (see Section 8-1-6 of this Chapter).
- (B) Accompanying the application shall be a non-refundable application fee in the amount of Fifty Dollars (\$50.00).
- (C) Accompanying the application shall be cash or surety bond in the amount of One Thousand Dollars (\$1,000.00) conditioned upon:

1. Compliance with all ordinances, including but not limited to the Land Development Code of the City and statutes of the State of Colorado, including payment of all City, County, and State taxes and fees, and
2. Payment of any judgment rendered in favor of a resident of the City against the applicant or any of his/her agents or employees shall be submitted with the application. Such bond shall remain in effect for a minimum period of nine (9) months beyond the expiration date of the transient merchant license issued to the applicant.

Said bond shall be a corporate surety bond issued by a company licensed to do business in Colorado and approved by the City Clerk.

Also submitted with the application shall be a form appointing the City Clerk as the true and lawful agent with full power and authority to acknowledge service of process for and on behalf of the applicant, and each of his/her agents or employees, upon a form to be provided by the City. If any process is served upon the City Clerk, the City shall send a copy of such process to the applicant at the address listed on the application by registered or certified mail.

Nothing in this Article shall be deemed to apply to any person engaged in distribution of information in the exercise of such person's First Amendment rights under the United States Constitution.

#### **8-1-3: ISSUANCE OF LICENSE:**

Following receipt of a properly completed application accompanied by cash or a surety bond, appointment of agent for service of process, the application fee, a copy of current Colorado sales tax license, and a copy of current City sales tax license, the City shall issue the transient merchant's license for a term of ninety (90) days.

The license shall state the expiration date and describe the goods or services to be offered. The license shall contain a notice to customers that One Thousand Dollars (\$1,000.00) cash or surety bond has been filed with the City, conditioned on compliance with all City ordinances and State laws, and the payment of any judgment rendered against the applicant in favor of a resident of the City will be paid, and that the Gunnison City Clerk is the licensee's agent for service of process.

The applicant shall post a copy of the transient merchant license in a conspicuous place at his/her place of business and produce it upon request to any customer, any police officer, or other agent or employee of the City.

- (D) For a business with more than one location, a separate transient merchant license is required for each place of business.

#### **8-1-4: TRANSFERABILITY OF LICENSES:**

No license issued under this title may be transferred or assigned, and no license is valid for any person other than the person named thereon.

**8-1-5: OBSTRUCTION OF TRAFFIC PROHIBITED:** It shall be unlawful for any licensee to conduct business at any location, private or public, in such a manner as to hinder or obstruct the free passage of pedestrian or vehicular traffic. It shall be unlawful for any licensee to transact business on City rights-of-way.

**8-1-6: LOCAL SPONSOR:** A transient merchant is required to be sponsored by a local sponsor.

The local sponsor shall file, on forms provided by the City, an application with the City in which the local sponsor shall take responsibility for the business related acts of the transient merchant, and each agent or employee thereof, and shall guarantee payment of all City, County, and State taxes due or judgment rendered against the transient merchant as a result of the business, and shall act as the transient merchant's agent for service of process and handling of warranty and customer complaints. The local sponsor shall also be liable for any zoning violations.

After approval of the sponsorship by the City, the transient merchant may conduct the business described thereon. The applicant and each agent or employee shall carry a copy of the approved letter and produce it upon request to any employee or agent of the City or any customer. A copy shall be posted in a conspicuous place at the transient merchant's place of business.

**8-1-7: REVOCATION OF LICENSE:**

The license issued hereunder may be revoked by the City Clerk following notice and hearing on account of any material misstatement contained in the application, any violation of this Article, any violation of City ordinances, and regulations applicable to the business activity of the applicant.

(B) Notice of hearing shall be either served upon the applicant in accordance with the Colorado Municipal Court Rules of Procedure or mailed, postage prepaid, to the applicant at the address set forth in the application for license.

No license shall be issued to any applicant, or agent or employee thereof, for whom a license has been revoked, until at least one year has elapsed since revocation.

**8-1-8: APPEALS:** In the event any applicant believes that the requirements of this Chapter constitute an undue burden upon interstate commerce, he/she may apply in writing to the City Council, in which event a hearing shall be held before the Council to consider the matter. The applicant may appear and present such evidence as he/she may desire at the hearing. Following the hearing, the Council shall determine a license fee which is fair and reasonable and does not constitute a burden on interstate commerce.

**8-1-9: PENALTIES:** Any person convicted of a violation of this Chapter shall be guilty of a misdemeanor. Upon conviction, the misdemeanor shall be punishable by a fine of up to One Thousand Dollars (\$1,000.00), or imprisonment for a period of ninety (90) days, or both such fine and imprisonment for each offense. Each day that a violation continues to exist shall be considered a separate offense.

Section 2. If any section, sentence, clause, phrase, word, or other provision of this ordinance is, for any reason, held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words, or other provisions of this ordinance, or the validity of this ordinance as an entirety, it being the intention that the remaining provisions of this ordinance shall stand, notwithstanding the invalidity of any section, sentence, clause, phrase, word, or other provision.

Section 3. The provision of this ordinance being of general application within the City of Gunnison, the City Clerk of the City of Gunnison is hereby directed to incorporate the provisions of this ordinance into the City of Gunnison City Code.

**INTRODUCED, READ, PASSED, AND ORDERED PUBLISHED** this 27th day of May, 1997, on first reading, and introduced, read, and adopted on second and final reading this 10th day of June, 1997.

  
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Mayor

ATTEST:

  
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City Clerk